

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

RIVERDALE PARK, LLC,

Plaintiff,

v.

KENNETH R. TALLEY and
KURT R. COSTELLO,

Defendants.

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C.A. No.: S25C-02-029 RHR

Submitted: July 10, 2026

Decided: July 27, 2026

ORDER

This 27th day of July, 2026, upon consideration of defendants Kenneth R. Talley and Kurt R. Costello’s motion to strike the amended complaint, and plaintiff Riverdale Park, LLC’s (“Riverdale”) response, it appears to the court that:

1. Riverdale filed a motion to amend the complaint on May 27, 2026.¹ This court granted the motion at oral argument on June 12, 2026,² and Riverdale filed the amended complaint on June 17, 2026.³

2. Talley and Costello filed an answer to the amended complaint⁴ and a motion to strike on July 7, 2026.⁵ The motion seeks to strike the amended complaint

¹ D.I. 35, Pl.’s Mot. to Amend Compl.

² D.I. 39; D.I. 42, Order.

³ D.I. 41, Am. Compl.

⁴ D.I. 43, Defs.’ Answer to Am. Compl.

⁵ D.I. 44, Defs.’ Mot. to Strike.

on the basis of insufficiency of service of process. Talley and Costello allege that Riverdale served the documents to their former Pennsylvania address rather than their residence at 28467 Pocahontas Avenue in Millsboro, Delaware.

3. Riverdale filed its response to the motion to strike on July 10, 2026.⁶ It argues that the motion should have been filed before Talley and Costello responded to the pleading, in accordance with Delaware Superior Court Civil Rule 12(f).⁷

4. The procedure for motions to strike is established in Rule 12(f) as follows:

Upon motion made by a party *before* responding to a pleading or, if no responsive pleading is permitted by these Rules, upon motion made by a party within 20 days after the service of the pleading upon the party or upon the Court's own initiative at any time, the Court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter.⁸

5. Generally, motions to strike are disfavored and granted “sparingly, and then only if clearly warranted, with doubt being resolved in favor of the pleading.”⁹

⁶ On July 17, Talley and Costello filed a notice of removal to federal court. This court has not yet received any information from the federal court that it accepted the filing. Therefore, it continues to have jurisdiction to issue this order.

⁷ D.I. 45, Pl.’s Resp. to Defs.’ Mot. to Strike.

⁸ Del. Super. Ct. Civ. R. 12(f) (emphasis added).

⁹ 395 Associates, LLC v. New Castle Cty., 2005 WL 3194566, at *1 (Del. Super. Ct. Nov. 28, 2005) (quoting Crowhorn v. Nationwide Mut. Ins. Co., 2001 WL 695542, at *7 (Del. Super. Ct. Apr. 26, 2001)).

6. No Delaware case explicitly addresses whether contemporaneously filing a motion to strike with a responsive pleading renders the motion untimely.¹⁰ If the motion is untimely, the court may still consider it on its own initiative.¹¹

7. Talley and Costello’s motion to strike, however, seeks to strike the amended complaint in its entirety based on insufficient service of process. This assertion is not proper under a motion to strike where the court’s review of the pleading at issue is limited to determination of whether there is “any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.”¹² Rather, a motion to dismiss is the appropriate means of accomplishing the goal Talley and Costello seek.¹³

8. Even if Talley and Costello raised insufficient service of process in a motion to dismiss, however, it is evident that they were properly served with the amended complaint.

¹⁰ See generally *Heisenberg Principals Fund IV, LLC v. Bellrock Intel., Inc.*, 2018 WL 3460433, at *1 (Del. Super. Ct. July 17, 2018) (considering a motion to strike that was contemporaneously filed with an answer, but not making a decision based on timeliness).

¹¹ *Stinnes Interoil, Inc. v. Petrokey Corp.*, 1983 WL 412258, at *1 (Del. Super. Ct. May 23, 1983) (“However, since the Court, under this rule, may act on its own initiative, an untimely motion may be considered.”).

¹² Del. Super. Ct. Civ. R. 12(f); see also *Sandonato v. Horsey*, 2025 WL 2622481, at *2 (Del. Super. Ct. Sept. 10, 2025); see also *Fontana v. CSX Transp., Inc.*, 330 A.3d 967, 986 (Del. Super. Ct. Jan. 28, 2025) (“[A] motion to strike under Rule 12(f) is not the equivalent of a partial motion to dismiss under Rule 12(b)(6).”); see also *Wealth v. Renai*, 114 A.2d 809, 810 (Del. Super. Ct. Mar. 2, 1955) (“A motion to strike under Superior Court Rules, Civil rule 12(f) . . . is not proper where it seeks the dismissal of one of the causes of action in a complaint as a matter of law.”).

¹³ Del. Super. Ct. Civ. R. 12(b)(5); *Wealth*, 114 A.2d at 810.

9. Under Delaware Superior Court Civil Rule 5(b), service can be made upon a party by mailing a copy of the pleading or papers to the party's last known address. Service is complete once mailing has occurred.¹⁴

10. Here, Riverdale's certificate of service at the end of the amended complaint certifies that it was served upon Talley and Costello by mail to the 28467 Pocahontas Avenue, Millsboro, Delaware address and to the Pennsylvania address.¹⁵ Service was thus proper under this court's rules. And it is clear that Talley and Costello received actual notice of the amended complaint: the answer they filed contemporaneously with their motion to strike demonstrates their familiarity with the amended complaint because they responded to each allegation.¹⁶ This court finds that service of the amended complaint was proper.

THEREFORE, Talley and Costello's motion to strike is DENIED.

IT IS SO ORDERED.

/s/ Robert H. Robinson, Jr.

Robert H. Robinson, Jr., Judge

pc: Prothonotary
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¹⁴ Del. Super. Ct. Civ. R. 5(b).

¹⁵ D.I. 41, Pl.'s Am. Compl., at 5; *see generally Sandonato*, 2025 WL 2622481, at *2 (finding that filing a certificate of service swearing that a document was mailed to a party's home address sufficiently complied with Rule 5(b)).

¹⁶ D.I. 43, Defs.' Answer to Am. Compl.; *see generally Curonix LLC v. Perryman*, 2026 WL 252838, at *5 (Del. Ch. 2026) ("Although [Defendant] claims that she never received a copy of the Second Amended Complaint from the prison, Plaintiff's affidavit of service demonstrates that service was properly effectuated under the Court rules. [Defendant's] Motion to Dismiss also demonstrates that she is, in fact, familiar with the allegations in the Second Amended Complaint.").

